



NUCLEAR REGULATORY COMMISSION

[7590-01-P]

Atomic Safety and Licensing Board Panel

Before the Licensing Board:

G. Paul Bollwerk, III, Chairman
Dr. Richard E. Wardwell
Dr. Thomas J. Hirons

In the Matter of

CROW BUTTE RESOURCES, INC.

(Marsland Expansion Area)

[Docket No. 40-8943-MLA-2;

ASLBP No. 13-926-01-MLA-BD01]

October 22, 2014

Memorandum and Order
(Order to Show Cause)

The Atomic Safety and Licensing Board hereby directs intervenor Oglala Sioux Tribe (OST) to show cause as to why this litigation should not be dismissed for want of prosecution.

The locus of this case is a challenge by OST to a May 2012 application by Crow Butte Resources, Inc., (CBR) to amend CBR's existing 10 CFR part 40 source materials license to operate a satellite in situ uranium recovery facility on the Marsland Expansion Area (MEA) site. OST was admitted as an intervenor to this proceeding in May 2013, with the Licensing Board finding that OST had established standing and submitted two admissible contentions. See LBP-13-6, 77 NRC 253, 304□05 (2013), aff'd, CLI-14-02, 79 NRC 11, 14 (2014). Thereafter, in June 2013 CBR and the Nuclear Regulatory Commission (NRC) staff lodged appeals with the Commission contesting the Board's standing and contention admissibility determinations. See [CBR] Notice of Appeal of LBP-13-06 (June 4, 2013); NRC Staff's Notice of Appeal of LBP-13-6, Licensing Board's Order of May 10, 2013, and Accompanying Brief (June 4, 2013). Although

OST filed no answer in response to the staff and CBR appeals, the Commission upheld the Board's standing and contention admissibility rulings. See CLI-14-02, 79 NRC at 14.

OST's two admitted contentions challenged information provided by CBR in its environmental report (ER) document submitted in support of CBR's license amendment application. OST contention 1, which is entitled "Failure to Meet Applicable Legal Requirements Regarding Protection of Historical and Cultural Resources," seeks to challenge the discussion of affected historic and cultural resources in the CBR ER. See LBP-13-6, 77 NRC at 306. On June 30, 2014, the staff issued its draft environmental assessment (EA) regarding potential impacts to cultural resources in the MEA site. See [CBR] Proposed [MEA] NRC Documentation of the NHPA Section 106 Review (Draft Cultural Resources Sections of [EA]) 1 (June 30, 2014) (ADAMS Accession No. ML14176B129). With the issuance of this document, the schedule previously established by the Board for filing any new or amended contentions relative to that document was activated. See Licensing Board Memorandum and Order (Revised General Schedule) (Aug. 8, 2014) at 1□2 (unpublished) [hereinafter Revised General Schedule]. OST, however, failed to submit any new or amended contentions relative to the draft EA, after which the Board outlined the schedule for party dispositive motions and responsive pleadings regarding OST contention 1. See id. at 2.

In accord with that filing schedule, the staff submitted a motion for summary disposition of OST contention 1, and CBR filed a response in support of the staff's motion. See NRC Staff's Motion for Summary Disposition of Contention 1 (Aug. 6, 2014) [hereinafter Staff Contention 1 Dispositive Motion]; [CBR] Response in Support of NRC Staff Motion for Summary Disposition of Contention 1 (Aug. 18, 2014). OST, however, failed to answer either filing. On October XX, 2014, the Board granted the staff's summary disposition request and dismissed OST contention 1. See Licensing Board Memorandum and Order (Ruling on Motion for

Summary Disposition Regarding Oglala Sioux Tribe Contention 1) (Oct. 22, 2014) at 2 (unpublished). As a consequence, only one issue statement, OST contention 2, which bears the title “Failure to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration,” see LBP-13-6, 77 NRC at 306, remains active in this case.¹

OST last submitted a filing in this proceeding on September 10, 2013. See [OST's] Initial Mandatory Disclosures (Sept. 10, 2013). As far as the Board is aware, the most recent contact with OST counsel came in the context of the recent summary disposition filings. According to the staff, in seeking to fulfill the staff's responsibility under 10 CFR 2.323(b) to consult with OST before filing its dispositive motion regarding OST contention 1, the staff was able to reach Ms. Cindy Gillis, counsel for OST,² but she informed the staff that they “should contact the in-house counsel for the Tribe.” Staff Contention 1 Dispositive Motion at 1 n.2. The staff reports it made several attempts to reach OST in-house counsel, albeit without success, and that a further email to Ms. Gillis went unanswered. See id.

Despite the opportunity to make a filing before the Commission regarding the CBR and staff standing and contention admissibility appeals and before the Board in response to the staff's draft EA cultural resources sections or the staff's motion for summary disposition of OST contention 1, all arguably significant matters in this proceeding, OST failed to provide a submission of any kind. Indeed, OST has made no filing in this proceeding in over a year. It thus appears to the Board that OST does not have any interest in further pursuing this litigation.

¹ Based on the current staff review schedule for the CBR application that calls for issuance of the staff's final environmental document on or about July 31, 2015, an evidentiary hearing regarding OST contention 2 is scheduled for May/June 2016. See Revised General Schedule app. A, at 1, 3.

² Having filed a notice of appearance, see Notice of Appearance (Jan. 29, 2013), and apparently not having submitted a notice of withdrawal, as far as the Board is aware Ms. Waonsilawin Cindy Gillis remains OST's attorney of record for this proceeding.

As a consequence, the Board hereby gives notice that, absent some response from OST within thirty days of the date of publication of this issuance in the Federal Register that demonstrates a continued interest in this cause, the Board will dismiss OST contention 2 and terminate this proceeding.³ Applicant CBR and the staff likewise are permitted to file a response to this issuance within that time frame if either wishes to do so.

It is so ORDERED.

For the Atomic Safety
and Licensing Board

Rockville, Maryland, October 22, 2014.

G. Paul Bollwerk, III, Chairman,
Administrative Judge.

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³ As the Commission noted in its ruling affirming the Board's standing and contention admissibility rulings, pursuant to 10 C.F.R. § 2.320, "the Tribe's failure to pursue a contention in the future could result in (among other things) dismissal of the contention." CLI-14-2, 79 NRC at 14 & n.10.